

DW 04-048

CITY OF NASHUA

RSA 38 Proceeding re Pennichuck Water Works

**Order on Motion for
Reconsideration and/or Rehearing of Order No. 24,654**

O R D E R N O. 24,671

September 22, 2006

The New Hampshire Public Utilities Commission (Commission) opened this docket to consider the petition of the City of Nashua (Nashua) to take certain assets of Pennichuck Water Works (PWW) pursuant to the municipalization process authorized by RSA 38. The case is progressing toward hearing in 2007.

On March 16, 2006, PWW filed a motion to compel Nashua to respond to certain data requests and produce documents requested at depositions regarding Veolia, Nashua's proposed operations and management contractor. Nashua filed an objection on March 27, 2006.

On April 19, 2006, the Commission designated Hearings Examiner Donald M. Kreis to hear the parties, report the facts and make recommendations to the Commission pursuant to RSA 363:17 as to the disposition of the motion. By letter of April 28, 2006, Mr. Kreis informed the Commission that the parties had met and that most of the issues raised by the discovery motion had been resolved. On May 9, 2006, Nashua informed the Commission that it would produce much of the material and information in dispute. The remaining unresolved issue concerned Nashua's response to the PWW request for "copies of all prior drafts of the Veolia and R.W. Beck agreements with Nashua which are set forth as Veolia Ex. B and R.W. Beck Ex. 3, along with documents which constitute or refer to all negotiations concerning said agreements or prior

drafts thereof.” On May 24, 2006, the hearings examiner filed a letter recommending the Commission grant PWW’s motion to compel Nashua to answer the data request. On August 7, 2006, the Commission issued Order No. 24,654 rejecting the hearings examiner’s recommendation and denying PWW’s motion .

PWW sought rehearing and/or reconsideration by motion filed on August 22, 2006. In support of its motion, PWW took the position that documents relating to the negotiation of the draft contracts are necessary (1) to determine the fees Veolia will charge Nashua and (2) to ascertain whether Nashua can operate and maintain the PWW assets in a more cost efficient manner than PWW could. PWW contends that Nashua has not identified what the municipality would be charged for review and inspection of construction, fire flow tests, creation of as-built plans, and for repair and maintenance of pipes, service lines and equipment. PWW asserts that the Commission erred in concluding that the negotiation documents sought preceded Nashua’s signing of written contracts when, to PWW’s knowledge, the contracts have not been signed. PWW contends the Commission erred in concluding that there would be no circumstances where the negotiation documents would become part of the record in this proceeding. PWW also asserts the Commission erred in concluding that the contract documents themselves reveal the information necessary to determine the charges Nashua will incur in contracting with the two firms.

On August 28, 2006, Nashua filed an objection to PWW’s motion and suggested that PWW had mischaracterized Order No. 24,654 as dealing with PWW’s right to discover Nashua’s projected costs for operating the PWW system. According to Nashua, truly at issue is whether PWW is entitled to obtain prior drafts of the Veolia and R.W. Beck contracts. According to Nashua, PWW has not offered any new grounds for distinguishing the Commission’s decision in

Public Service Company of New Hampshire, 89 NH PUC 226 (2004). Nashua stated that its petition is based on what was submitted with its January 12, 2006 testimony, not on discussions that may have taken place during negotiations. Nashua stated that it provided PWW with cost projections in testimony of two of its witnesses, George Sansoucy and Glenn C. Walker.

IV. COMMISSION ANALYSIS

The Commission may grant motions for rehearing if good reason for the rehearing is stated in the motion. RSA 541:3. Applying that standard here reveals no basis for changing our previous determination as to discovery in this proceeding.

In essence, the arguments PWW makes on rehearing are the same as those we considered and rejected in Order No. 24,654. Beyond that, we stress that in declining to compel Nashua to provide certain draft documents exchanged in contract negotiations, we did not rule that cost information about the cost of the services covered (or not covered) by the contracts is irrelevant. Rather, consistent with established precedent, we declined to require a litigant to disgorge materials developed in confidential contract negotiations with the expectation that, to the extent that the terms of the contracts or the context of their negotiations are relevant, there are ample other ways of discovering the information.

In that regard, we note Nashua's representation that it has provided "detailed contracts related to its operation and oversight of its water system, as well as detailed testimony from [Messrs. Sansoucy and Walker], setting forth Nashua's financial projections and assumptions for operation of the system, rates, and other issues." Objection at 2. We further note that Nashua has provided PWW with two prior drafts of the Veolia contract. Objection at 15. We agree with Nashua that these witnesses and these documents are reasonable avenues through which PWW can adduce evidence about the costs to Nashua of operating the PWW system and the extent to

which those costs are or are not within any agreements with Veolia and R.W. Beck. To the extent that our previous order suggested that such agreements have, in fact, been finalized, that does not change our opinion of whether PWW is entitled to discover additional documents or information beyond the negotiation-related data already produced.

Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s Motion for Reconsideration and/or Rehearing Regarding Order No. 24,654 is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary